

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

ANNIE LAURIE GAYLOR; DAN
BARKER; IAN GAYLOR, Personal
Representative of the estate of ANNE
NICOL GAYLOR; AND FREEDOM
FROM RELIGION FOUNDATION,
INC.,

Plaintiffs,

v.

JACOB LEW, Secretary of the United
States Department of Treasury; JOHN
KOSKINEN, Commissioner of the
Internal Revenue Service; and the
UNITED STATES OF AMERICA,

Defendants.

Case No. 16-CV-215

DECLARATION OF THE VERY REVEREND FATHER GREGORY JOYCE

1. My name is Father Gregory Joyce. I am over the age of 21 and am capable of making this unsworn declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or crime involving dishonesty, and the facts below are either within my personal knowledge or are based upon teachings of my church with which I am familiar and which I believe to be true and correct.

2. I am the Rector of St. Vladimir Orthodox Church (“St. Vladimir’s”), which is part of the Diocese of Chicago and Mid-America (the “Diocese”) of the Russian Orthodox Church Outside of Russia (“ROCOR” or the “Church”). My duties as Rector include performing multiple religious services each week, overseeing charity work in

the parish, directing the religious education and rearing of youth, and providing pastoral care to each member of the parish to help them stay on the true path.

3. I began studying to be a priest at Holy Trinity Monastery in Jordanville, New York, in 1993. I was ordained a priest in 1995. The following year, I received my pastoral Theological Certificate from Holy Trinity Monastery and was appointed Rector at St. Vladimir's, where I have twenty years of pastoral experience.

4. I received an MA in Education from the University of Michigan in 2001. Two years later, I received a Doctorate of Ministry from the Pittsburgh Theological Seminary. In addition to serving as Rector of St. Vladimir's, I am also the Dean of the Pastoral School of the Diocese. Approximately three to five new priests graduate from the Pastoral School each year.

5. I have also served as the Secretary of the Diocesan Council of the Diocese for the last fifteen years. The Council oversees the parishes in the Diocese both spiritually and temporally. As Secretary, I am present during Council meetings and keep the minutes. My work has familiarized me with the finances of the Diocese, as well as the duties, schedules, and housing arrangements of the other priests in the Diocese.

6. Headquartered in Chicago, Illinois, the Diocese includes 42 parishes and 4 monastic communities, and has about 60 clergy; 12 parishes are within the boundaries of the Seventh Circuit and 3 are in the Western District of Wisconsin. The Diocese is responsible for 16 states, and covers territory from Canada to Mexico, and from the Ohio and Mississippi Rivers to the Rocky Mountains. We do not keep a

Diocese-wide register of the adherents to our faith or of the number of weekly attendees at church services, as the former Soviet Union's persecution of believers has made many Orthodox hesitant to list their names on official rosters. At St. Vladimir's, I care for a parish of about 300 people.

7. For an Orthodox priest, "the most precious calling on earth is to participate in the salvation of men's souls. The more assiduous the pastor is in fulfilling this responsibility for the salvation of souls, the closer the pastor approaches Christ, the Chief Shepherd, ultimately receiving a crown in His heavenly kingdom." *Guidelines for Clergymen of the Russian Orthodox Church Outside of Russia*, ¶ 2 (hereafter, "*Guidelines for Clergymen*"). Thus, Orthodox priests are called to a wide range of pastoral duties.

8. A ROCOR parish has services multiple times per week, and the priest must be present for each one. Gathering with fellow believers to participate in divine services is a fundamental part of Orthodox worship and of "[w]hat is necessary for the spiritual perfection of the faithful." *Guidelines for Clergymen*, ¶ 7. We view the Church as a type of "heaven on earth," where the worshipers pray together and partake of the Holy Mysteries of Confession and Communion. Frequent participation is so important that a Church canon states that missing three Sundays in a row is a grave sin that requires confession.

9. ROCOR has an ordained clergy, and only the clergy can perform the divine services and the Mysteries of Confession and Communion. "The priest appears as a mediator between God and men and the means of the distribution of the Holy Spirit's

gifts of grace.” *Guidelines for Clergymen*, ¶ 3; see also I Corinthians 3:9 (“We are laborers together with God.”). These sacraments are central to the Orthodox faith. We conceive of the Church as a community of believers gathered around the altar, living in a Eucharistic community. Thus if a parish lacks a priest and goes without Holy Communion, it does not take long for that parish to fall apart spiritually. It is therefore crucial that a priest in the Diocese be available to perform each divine service in his parish.

10. The exact frequency of services in each parish varies throughout the year, but the average at St. Vladimir’s is about 6 services per week. It includes each Saturday evening and Sunday morning, as well as on various weekdays depending on the liturgical calendar.

11. Priests perform additional services on important holy days, which frequently fall on weekdays. “On the great feasts which fall on weekdays, he is obligated to celebrate the divine services even if there is only a small number of faithful in attendance; for the number of faithful will grow in accordance with the dedication of the priest.” *Guidelines for Clergymen*, ¶ 25. In 2016, eight of the twelve Great Feasts fall on weekdays. The nature of Orthodox services on holy days usually requires a priest’s participation during the entire day.

12. Priests also perform weddings, baptisms, and funerals whenever necessary.

13. “According to the teaching of the Savior, a good shepherd is bound to his flock with tight bonds.” *Guidelines for Clergymen*, ¶ 11. Orthodox priests are thus called to counsel their flocks and visit the sick, regardless of the day of the week or

time of day or night that the need may arise. This makes being a priest essentially a 24/7 job. The nature of these duties means that many priests are in church or out among their flock late into the evening before arriving early again the next morning.

14. I set aside ten hours per week in my schedule for appointments with parishioners who need to meet with me at the church. I spend at least another ten hours visiting with and counseling them outside the church, wherever or whenever the need arises. This means that multiple times per week I have to leave home in the evening to return to St. Vladimir's, a hospital, or someone's home to meet with a parishioner who is ill or in need of counsel.

15. As Rector, I must "take particular care of the sick among [my] parishioners, visit them at home or in the hospital, and see to it that none of [my] parishioners dies without a final confession and the Holy Mysteries of Christ." *Guidelines for Clergymen*, ¶ 62. This means that, wherever I am, I must drop whatever I am doing to respond to a parishioner who is ill and at risk of dying. It would be a great spiritual tragedy if I did not make it in time and one of my parishioners died without a final confession.

16. Living any significant distance away from their parishes would hinder priests in the Diocese in performing their pastoral duties. For that reason, Church regulations require priests to live within the geographic boundaries of their parishes. The parishioners "must see to it that the priest has a decent place to live near their church." *Guidelines for Clergymen*, ¶ 76.

17. I live within my parish boundaries, and only a short drive from St. Vladimir's. If I lived further away, it would be difficult for me to be present for the numerous services per week, and would be nearly impossible for me to respond to the needs of my flock when they arise late at night or early in the morning.

18. Church regulations also require a priest to serve the parish to which the Diocese assigns him. In ROCOR, the diocesan Bishop has absolute authority to move priests from parish to parish. Bishops can also agree to move priests across diocesan lines, including to foreign countries. Likewise, a parish may not recruit or hire a priest on its own, and may only employ clergy assigned by the Diocese. The Diocese sincerely believes these regulations to be an inalienable part of its religious beliefs.

19. Other clergy in the Diocese are members of monastic communities who have taken additional obediences, which require them to live a simple and ascetic lifestyle within a family-like community that shares all things in common. They are bound to live within a parsonage or similar setting in close proximity to their church and labors. It would be practically impossible for a monastic community to exist scattered across numerous homes.

20. Eight clergy in the Diocese live in Church-owned parsonages—four in Chicago, Illinois; two in Minneapolis, Minnesota; and two in Houghton, Michigan. The Diocese also has one nun who lives in a convent in St. Louis, Missouri. Another thirteen clergy in the Diocese receive housing allowances ranging from \$800 to \$2,917 per month.

21. I frequently use my home to fulfill my pastoral duties directly. I have a home office where I do most of my work outside of the divine services and personal visits. Members of St. Vladimir's are in my home multiple times per week, both for individual counseling and parish events.

22. Purchasing a physical parsonage is usually beyond the means of our parishes. The majority of parishes have annual budgets of less than \$100,000. They often cannot afford the upfront cost of a down payment or the recurring costs of insurance and upkeep. These parishes typically provide their priests with a modest housing allowance instead. When I became Rector at St. Vladimir's nearly twenty years ago, the parish could not afford to buy a parsonage. For this reason, they began providing me and my family with a cash housing allowance.

23. The majority of priests in the Diocese are married and have families. But most of the parishes in the Diocese cannot afford to provide enough salary to support a priest and his family. Thus, to survive financially, most priests must add secular employment to their religious vocation. For the first seventeen years of my ministry, St. Vladimir's could not afford to support me and my family, and I had to take on secular employment. This made it extremely difficult for me to fulfill my priestly duties while still making time for my wife and children. Just two and a half years ago, I was finally able to leave my secular job in order to devote myself full-time to the ministry.

24. The time that a priest must spend in secular employment necessarily takes away from the time that he can spend performing his pastoral duties. Even now,

priests with secular jobs are often unable to offer the required services on important holy days that fall on weekdays. Some priests are forced to hold services at 6 am before they go to work, which makes it more difficult for parishioners to attend. I was sometimes forced to hold services at midnight after working the entire day in my secular job.

25. It is especially challenging for priests with secular employment to respond to their parishioners who are ill. They cannot wait to visit a parishioner until the weekend, or often even until the end of the work day, for fear that he or she may die without a final confession and the opportunity to receive the Holy Mysteries. And for those parishioners who do pass away during the week, many priests are forced to have funerals in the evening.

26. Striking down the parsonage allowance would place a severe financial strain on our parishes' ability to provide for their clergy. Across the diocese, this would add a combined \$125,000 or more to our priests' gross income without increasing their actual pay, resulting in a significant tax burden that they could ill afford. Nor could most parishes afford to increase the priest's compensation to offset the additional tax. Taxing the priests' housing allowances would cut their already meager salaries, and may require them to further cut back their priestly work in order to take additional secular work. And because Orthodox services cannot take place without a priest present, this would make it more difficult for Orthodox adherents throughout the Diocese to practice their faith.

27. As part of my compensation, I receive a housing allowance of about \$2,917 per month, and I exempt it from my gross income under 26 U.S.C. § 107(2). I plan to continue to do so in the future. I use the allowance to provide a home for my wife, our three children, and me.

28. For me, taxing my housing allowance would reduce my take-home pay by as much as a third. I could not support my family on this reduced amount. St. Vladimir's would not be able to increase my salary to offset the tax, so I would likely have to find a part-time secular job. And with another job placing demands on my time, I would have less time to fulfill my priestly and pastoral duties. This would come at a spiritual cost to the members of my flock and to me, and certainly to my family.

29. The Russian Orthodox Church has witnessed firsthand how taxation can burden religious practice. Taxation was one element in the Soviet Union's broad attempts to quash religious life and impose a state-approved ideology. At various times, different taxes were imposed to discourage religious life or to subject church members and officials to punitive hardship. For example, priests living in parsonages were charged a special housing tax, amounting to several times the rate that a laborer would have paid for an equivalent accommodation. Priests paid additional taxes for not serving in the military and for being "unemployed."

30. The Russian Orthodox Church has also seen the dangerous effects of excessive government entanglement in and interference with religious practice. Prior to the Bolshevik Revolution, the Russian Orthodox Church and the Imperial Russian

Government were closely intertwined. The state exerted considerable authority over the Church, and determined many of the Church's incomes, property rights, and authority.

31. This entanglement continued during the Soviet era. Church officials were corrupted or pressured into KGB service, and the state placed a great deal of pressure on Church authorities. The most striking example was the fate of Metropolitan Sergius, who was named the Patriarch of Moscow after the execution of Patriarch Tikhon. He was forced to issue a declaration stating that the Church's goals were one with, and aligned to, the atheistic Soviet state.

32. If Freedom From Religion Foundation is successful in this lawsuit, priests in the Diocese, including me, will lose our ability to claim the parsonage allowance, and will suffer direct financial harm. If any parishes can afford to increase their priests' pay, they will bear the financial burden. Most parishes, however, will not be able to bear that burden, and the cost will be felt spiritually as priests are forced to shift more of their time away from their priestly work to secular employment. This will threaten our ability to fulfill our spiritual mission as priests and as a Church.

33. The Diocese first became aware of this threat on October 11, 2016, after learning that FFRF had challenged the parsonage allowance a second time.

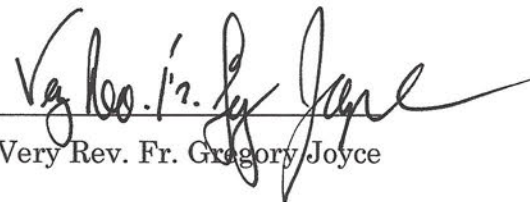
34. The Diocese was particularly concerned because it is our understanding that the last time that FFRF challenged the parsonage allowance, it was struck down. We also understand that the court did not have the benefit in the previous case of hearing from individuals and churches whose rights would be directly impacted by

striking down the parsonage allowance. No existing party in the case shares our religious beliefs or our unique history of having been burdened in our religious practice by excessive taxation or government entanglement with our Church, so we cannot expect them to protect our rights for us.

35. On October 26, 2016, the Diocese agreed to intervene in *Gaylor v. Lew* to protect our rights.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 1, 2016


Very Rev. Fr. Gregory Joyce